

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

IN RE: Chapter 11  
Case No. 24-10070 (BLS)  
TERRAFORM LABS PTE. LTD.,  
Debtor.  
Courtroom No. 1  
824 North King Street  
Wilmington, Delaware 19801  
Tuesday, March 12, 2024  
11:00 a.m.

TRANSCRIPT OF HEARING  
BEFORE THE HONORABLE BRENDAN L. SHANNON  
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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F. Gavin Andrews, Esquire  
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1 (Proceedings commence at 11:19 a.m.)

2 THE COURTROOM DEPUTY: All rise.

3 THE COURT: Please be seated. Good morning.

4 Ms. Berkovich, good morning.

5 MS. BERKOVICH: Good morning, Your Honor. Good to  
6 see you. Its Ronit Berkovich from Weil Gotshal for the  
7 debtor, Terraform Labs Pte, Ltd. I am joined today by my  
8 colleagues, Jared Friedmann, Christine Calabrese, and Gavin  
9 Andrews. We also have Paul Heath and Zach Shapiro from the  
10 Richards Layton Firm.

11 Also in the courtroom today from Dentons US, Sam  
12 Maizel, Tania Moyron, and Mark Califano, the debtor's  
13 proposed special litigation counsel. We also Michael Leto of  
14 Alvarez & Marsal, the debtor's proposed financial advisor.

15 THE COURT: And he is a declarant today.

16 MS. BERKOVICH: Yes, that is correct. As well as  
17 John Dubel, the debtor's independent director who also is a  
18 declarant today.

19 Thank you for making time for us this morning.

20 THE COURT: Happy to oblige.

21 MS. BERKOVICH: Your Honor, we filed the revised  
22 agenda this morning at Docket No. 170. I have a few updates  
23 even since then. There are two matters going forward today:  
24 the Dentons retention application at Docket 60 and the motion  
25 to pay certain amounts in furtherance of litigation at Docket

1 61. I will also note the motion to redact confidential  
2 information in connection with Dentons retention application  
3 at Docket 141. That is resolved through an agreed order  
4 filed under certification last night.

5 So, Your Honor, just last week we were before you  
6 on the same two motions facing objections from a sea of  
7 acronyms. We had the SEC, the U.S.T., and the UCC. We also  
8 raised at that point serious concerns about the UCC's  
9 position. Your Honor granted the UCC's request for  
10 adjournment over our objection.

11 We are pleased to report that we used the one week  
12 productively as well as the additional time this morning.  
13 Thank you, Your Honor, for being patient on that. And not to  
14 bury the lead, but we are fully resolved with all three  
15 parties on every issue except there is one remaining issue  
16 with the U.S. Trustee on the litigation payments motion --

17 THE COURT: Okay.

18 MS. BERKOVICH: -- which we will get to. Most  
19 notably, after the hearing last week, from the debtor's  
20 perspective, we heard a different tune from the UCC. We can  
21 spare the Court the details but suffice it to say that the  
22 debtor and the UCC spent the last week negotiating hard, but  
23 in good faith on the specific terms of the two orders that we  
24 are seeking. I think we are rowing in the same direction, at  
25 least for now.

1           So, we will discuss the specific resolutions when  
2 we get to the motions, but what is important is that these  
3 orders, if entered, will enable the debtor to mount its  
4 defense in the SEC jury trial that starts now in less than  
5 two weeks.

6           THE COURT: Can I ask just a technical question,  
7 and this is just because I don't know the answer. I think I  
8 asked at the first day hearing whether the debtor intended to  
9 interpose the automatic stay with respect to that and the  
10 debtor emphatically said no. Don't you still need relief  
11 from the stay or have I granted that?

12           MS. BERKOVICH: Relief from the stay to continue  
13 the SEC litigation?

14           THE COURT: Yeah.

15           MS. BERKOVICH: I don't believe we need relief from  
16 the stay. I think its automatically accepted from the stay.

17           THE COURT: Because of a police and regulatory  
18 action?

19           MS. BERKOVICH: That's correct.

20           THE COURT: Okay.

21           MS. BERKOVICH: This wasn't like through an  
22 agreement.

23           THE COURT: And -- yeah, I am not hinting at  
24 anything. I just didn't know the answer. There is a range of  
25 issues where they fall within that police power exception,

1 and when they don't, and when the government is acting in one  
2 capacity or another. I wasn't certain about what the result  
3 of that was. It was abundantly clear to me the debtor didn't  
4 intend to interpose the automatic stay. I didn't know  
5 whether or not relief or some authorization was necessary  
6 from me. So, you have answered that question. We can move  
7 on.

8 MS. BERKOVICH: We will take a further look at  
9 that.

10 THE COURT: You don't need to. Please don't.  
11 (Laughter)

12 MS. BERKOVICH: We want to make clear our position  
13 that the automatic stay would bar the enforcement of any  
14 monetary judgment by the SEC. You know, that is the  
15 exception to the exception.

16 THE COURT: Sure. That was kind of the thought  
17 process that I was running through, but, no, I don't want any  
18 further inquiry into that. One war at a time, Ms. Berkovich.

19 MS. BERKOVICH: In terms of road map, I think the  
20 UCC counsel would like to say a few words first. I then  
21 propose that we move onto the litigation -- sorry, to the  
22 Dentons retention application which Ms. Moyron and Mr. Maizel  
23 will handle. Then we can do the litigation payments motion  
24 which I will handle with my colleague, Mr. Andrews. We would  
25 introduce the evidence for each one of those separately.

1 THE COURT: I think that sounds fine.

2 MS. BERKOVICH: Thank you, Your Honor.

3 THE COURT: Mr. Hurst, good morning.

4 MR. HURST: Good morning, Your Honor. David Hurst,  
5 McDermott Will & Emery, on behalf of the official committee  
6 of unsecured creditors. Your Honor, today with me in the  
7 courtroom is my partner, Darren Azman, also Dante Pavan.

8 Unless you have any questions for me, Your Honor, I  
9 would like to turn the podium over to Mr. Azman.

10 THE COURT: Very good.

11 MR. HURST: Thank you.

12 THE COURT: Welcome, sir.

13 MR. AZMAN: Good morning, Your Honor. Darren Azman  
14 from McDermott Will & Emery, proposed counsel to the  
15 committee.

16 Thank you for the one-week adjournment. It was very  
17 productive. And as Ms. Berkovich pointed out, we are fully  
18 resolved on the motions that are for today.

19 There is one thing that I wanted to highlight for  
20 Your Honor. I think it will become a recurring theme in the  
21 case, at least in the near term. What we were trying to  
22 accomplish with the settlement was really preserving  
23 optionality. We don't know standing here today, it was a bit  
24 optimistic that we were going to understand the total value  
25 of the business, the merits of the SEC action, all those



1 things in a one-week period of time.

2           So, really what we were trying to accomplish, and I  
3 think we have accomplished it with the settlement, is  
4 preserving optionality meaning that the debtor will have the  
5 resources that it needs, nothing more, nothing less, to move  
6 forward with the SEC defense and then we will revisit this  
7 issue at the end of the trial as you will see in the proposed  
8 order that was filed as a status conference.

9           THE COURT: I saw that.

10           MS. AZMAN: And hopefully by that time, in the next  
11 two months, we will have done our diligence, get a better  
12 understanding of this business, whether its viable as a going  
13 concern even if they win, if they're not, and if we can  
14 resolve that before coming to Your Honor we will; otherwise,  
15 we will come back to Your Honor and rehash some of these  
16 discussions that we have had. I think what we have done here  
17 is really accomplished optionality which to the committee is  
18 the most important thing for right now.

19           THE COURT: Very good. Thank you, Mr. Azman. I  
20 appreciate it.

21           MR. AZMAN: Thank you. Your Honor, briefly; I may  
22 need to be excused. May I --

23           THE COURT: No worries.

24           MR. AZMAN: Thank you very much.

25           THE COURT: Thank you.

1 MS. MOYRON: Good morning, Your Honor.

2 THE COURT: Good morning.

3 MS. MOYRON: Tania Moyron of Dentons US LLP and in  
4 the courtroom as well, as Ms. Berkovich mentioned, my  
5 partner, Sam Maizel is in the courtroom as well as our senior  
6 associate, Sarah Schrag.

7 THE COURT: Let me ask a question, if I can, and it  
8 may be more directed to Ms. Berkovich or to Ms. Richenderfer.  
9 I understand that there remains one issue with respect to the  
10 litigation payments motion, which is not your problem, but I  
11 wouldn't mind knowing, at least generally, what that issue  
12 is.

13 MS. BERKOVICH: The one remaining issue is the  
14 payment for counsel fees for the Montenegro counsel.

15 THE COURT: Okay.

16 MS. MOYRON: Your Honor, as Ms. Berkovich and Mr.  
17 Azman reported, we are pleased that we have reached an  
18 agreement with all parties and thank you again for your time.  
19 And thank you to counsel for the SEC, the Office of the  
20 United States Trustee, and the committee. This has truly  
21 been a collaborative effort.

22 You have before you Docket No. 169. That is the  
23 amended order to retain Dentons. There have been two  
24 modifications to that order that I would like to walk the  
25 Court through.

1 THE COURT: Sure.

2 MS. MOYRON: With respect to Paragraph 5, Your  
3 Honor, that paragraph is a paragraph that we negotiated with  
4 the committee. As already indicated by Mr. Azman that gives  
5 the committee ethe opportunity to come before this Court  
6 after the trial. The second sentence of that paragraph is  
7 the committee's reservation of rights to evaluate Dentons  
8 continued services after that trial. The Office of the  
9 United States Trustee would also like to add their name into  
10 that second sentence in Paragraph 5 so they are also able to  
11 evaluate the services after trial.

12 THE COURT: Is that acceptable to Dentons?

13 MS. MOYRON: That is acceptable to Dentons. This  
14 would be included in our revised order.

15 THE COURT: Okay.

16 MS. MOYRON: The only other addition, Your Honor,  
17 is in Paragraph 13. In Paragraph 13 you will also recall  
18 that is a broad reservation of rights with respect to  
19 prepetition payments and with respect to the advanced fee  
20 retainer. The only party that was not included in that  
21 reservation of rights is the SEC, and we are going to add the  
22 SEC into the revised order.

23 THE COURT: Okay.

24 MS. MOYRON: The other thing I would like to tell  
25 Your Honor that is important to the SEC and its important to

1 the Office of the United States Trustee that we are going to  
2 put on the record is when this engagement is over any excess  
3 funds that Dentons has in its savings account, including any  
4 fees, will be returned, will be transferred or wired to the  
5 debtor's bank account.

6 THE COURT: Okay.

7 MS. MOYRON: I think with that I have captured what  
8 was requested, but there has been a lot of different  
9 discussions. So, I am going to pause and give counsel for the  
10 SEC and the U.S.T. an opportunity in case I have not stated  
11 something into the record that they wanted me to state into  
12 the record.

13 THE COURT: No, that sounds fine. I'm certainly  
14 happy to hear from anyone and we will start with Ms.  
15 Richenderfer. Good morning. Welcome.

16 MS. RICHENDERFER: Good morning, Your Honor. Linda  
17 Richenderfer from the Office of the United States Trustee.

18 I just wanted to emphasize that last point because  
19 it was very important to the Office that, for instance, in  
20 Paragraph 3 of the proposed order, it talks about something  
21 that has been defined as the post-petition advanced fee  
22 retainer. We just wanted to make sure it was clear on the  
23 record that that is not property of Dentons to keep  
24 regardless of what happens. It is going to be used in the  
25 normal course, and as invoices are approved, they will be

1 transferring money from that, I guess, into general accounts.

2 So, that was one of our concerns and then, of  
3 course, the large amount that is coming back to the debtor's  
4 account and they now have a bank account with a UDA bank.  
5 So, that all worked out very well over the past week. So, we  
6 are very happy about that, Your Honor.

7 THE COURT: Very good. Ms. Scheuer. Good morning  
8 and welcome. Good to see you again.

9 MS. SCHEUER: For the record Therese Scheuer from  
10 the U.S. Securities and Exchange Commission. With me in the  
11 courtroom are William Uptegrove and Michael Kelly, also from  
12 the SEC.

13 THE COURT: Welcome.

14 MS. SCHEUER: Thank you, Your Honor.

15 Before I begin, I just would like to confirm that  
16 it is the SEC's position that the District Court action falls  
17 under the police and regulatory exceptions to the --

18 THE COURT: Yeah, I didn't even want to open that  
19 can of worms.

20 (Laughter)

21 MS. SCHEUER: Thank you, Your Honor.

22 THE COURT: So, we will consider that can closed.

23 MS. SCHEUER: Thank you. Your Honor, when we filed  
24 our objections, we were faced with a situation where the  
25 debtor's litigation counsel had received a staggering \$166

1 million within a year of bankruptcy, disbursed over half that  
2 amount to itself, member firms, and lenders, and was seeking  
3 to continue to make payments using the approximately \$80  
4 million remaining in its retainer account. The SEC was not  
5 seeking to disqualify Dentons, but propose appropriate  
6 safeguards to comply with the bankruptcy code and help insure  
7 that payments are reasonable and appropriate.

8           The debtor and Dentons have agreed to make many of  
9 our requested changes. Dentons has agreed to return \$48  
10 million to the debtor. Dentons agreed to return interest  
11 earned during post-petition that remains at the end of the  
12 Dentons engagement and to return the remaining balance of the  
13 retainer at the end of its engagement.

14           They included language that nothing in the Dentons  
15 order restricts the right or claims of the SEC with respect  
16 to prepetition transfers to Dentons. They removed law firms  
17 from the list of contractors being compensated by Dentons.  
18 The debtor is working through the terms of a fee examiner  
19 appointment and has provided additional transparency about  
20 the vendors to be paid and included it in the litigation  
21 claims order. And it has also agreed, as part of the  
22 litigation claims order, that invoices will be reviewed and  
23 approved by the special committee in its sole discretion.

24           We think that these safeguards are appropriate  
25 under the circumstances and resolve the issues raised in our

1 objections. Thank you, Your Honor.

2 THE COURT: Very good. Thank you, Ms. Scheuer.

3 MS. MOYRON: Your Honor, I think with that,  
4 everything that is going to be included into the revised  
5 order and I'd like to turn it over to my partner, Sam Maizel,  
6 who will introduce into evidence the two declarations in  
7 support of our application.

8 THE COURT: Sure. Mr. Maizel, good to see you.  
9 It's been a while.

10 MR. MAIZEL: It has, Your Honor. Thank you. It  
11 falls to me to just clean up the record apparently this  
12 morning which is just --

13 THE COURT: Don't screw it up.

14 (Laughter)

15 MR. MAIZEL: No promises, Your Honor. Your Honor,  
16 with this we would move into evidence the declaration of Mark  
17 Califano which is attached as an exhibit to the application  
18 of the debtor for entry of an order authorizing the retention  
19 and employment of Dentons US LLP as special counsel. That is  
20 at Docket 60. The declaration, itself, is at Docket 60-3.  
21 And I don't believe there is any objection. I would ask the  
22 Court to enter it.

23 THE COURT: I would ask if there are any objections  
24 to the admission of Mr. Califano's declaration as part of the  
25 debtor's case in chief for purposes of the retention of

1 Dentons as special counsel.

2 (No verbal response)

3 THE COURT: Hearing no response, Mr. Califano's  
4 declaration is admitted.

5 (Califano declaration received into evidence)

6 THE COURT: Is there any party that intends or  
7 expects to cross-examine Mr. Califano regarding the contents  
8 of his declaration?

9 (No verbal response)

10 THE COURT: Very well. Mr. Califano's declaration  
11 is admitted without contradiction.

12 MR. MAIZEL: Your Honor, with that we move for the  
13 entry into evidence of the declaration of John S. Dubel in  
14 support of the application of the debtor for entry of an  
15 order authorizing the retention and employment of Dentons US  
16 LLP as special counsel to the debtor and debtor-in-  
17 possession, and also in support of the motion for the debtor  
18 -- of the debtor for entry of an order pursuant to Sections  
19 363, 503(b), and 105(a) of the Bankruptcy Code. That is at  
20 Docket Entry 160. I don't believe, again, there is any  
21 objection.

22 THE COURT: I would ask if there are any objections  
23 to the admission of Mr. Dubel's declaration as part of the  
24 debtor's case in chief for purposes of the litigation  
25 payments motion.



1 (No verbal response)

2 THE COURT: Very well. That declaration is  
3 admitted.

4 (Dubel declaration received into evidence)

5 THE COURT: Is there any party that intends or  
6 expects to cross-examine Mr. Dubel regarding the contents of  
7 his declaration?

8 (No verbal response)

9 THE COURT: Hearing no response, Mr. Dubel's  
10 declaration likewise is admitted without contradiction.

11 MR. MAIZEL: Thank you, Your Honor. Apparently, I  
12 got through it.

13 THE COURT: I would ask if anyone else wishes to be  
14 heard with respect to the debtor's application for an order  
15 authorizing the retention of Dentons under Bankruptcy Code  
16 Section 327(e) on the terms that have been described by  
17 counsel on the record and reflected in a revised form of  
18 order that has been provided to the Court under a notice of  
19 filing.

20 (No verbal response)

21 THE COURT: Hearing no response, I am prepared to  
22 approve and authorize the application. I note that the Court  
23 adjourned the hearing from last week and it is not lost upon  
24 me the amount of negotiation, arm wrestling and dialog  
25 necessary in order to get to a consensual submission of form

1 of order and I appreciate the efforts of all parties in  
2 connection there with.

3 The matter before me is the request for retention  
4 of special counsel. There is no dispute that Dentons is both  
5 capable and necessary to perform services that are required  
6 by the estate. The application is granted and the order will  
7 issue.

8 MS. BERKOVICH: Thank you, Your Honor. I will turn  
9 it over to my colleague, Mr. Andrews, to present the  
10 litigation payments motion.

11 THE COURT: Very good.

12 MR. ANDREWS: Your Honor, Gavin Andrews of Weil  
13 Gotshal on behalf of the debtor.

14 Your Honor, the litigation payment motion is at  
15 Docket No. 61, as I'm sure you are aware. It seeks to pay  
16 certain prepetition and post-petition amounts in furtherance  
17 of the debtor's defense to the SEC litigation which all into  
18 three categories: the employee counsel fees and expenses, the  
19 critical vendor payments, and foreign litigation costs. As  
20 Ms. Berkovich alluded to earlier, we understand that there is  
21 only one open item to be dealt with today.

22 Your Honor, if you would like, I am happy to  
23 summarize the relief in the motion including the relief in  
24 the revised order last night.

25 THE COURT: I think that would be appropriate. We

1 do have -- I appreciate getting the proposed revised final  
2 order that was submitted, I guess, last night. Again, the  
3 Court never really commenced the hearing on the substance of  
4 this last week. So, I think it would be appropriate, at  
5 least, just to recite generally the relief that is being  
6 sought. I believe we have already entered the evidentiary  
7 predicate for the relief so far.

8 MR. ANDREWS: Thank you, Your Honor. So, as you  
9 noted, the revised order was filed last night at Docket No.  
10 161 which does reflect a resolution with the UCC in respect  
11 to their objection. We did have some additional changes which  
12 were negotiated with the SEC this morning and I can take Your  
13 Honor through them after we get through the summary of the  
14 relief.

15 THE COURT: Okay.

16 MR. ANDREWS: So, as I mentioned, Your Honor, there  
17 is three broad categories that the litigation payments motion  
18 reflects. The first being the fees and expenses of five law  
19 firms that separately represent the debtor's current and  
20 former employees. The four law firms currently represent 16  
21 employes and one additional firm represents Do Kwon and  
22 Montenegro which we will get to.

23 These payments include prepetition fees and  
24 expenses of employee counsel in the amount of approximately  
25 \$355,000. I would note that this amount is after the

1 application of their respective prepetition retainers. There  
2 are post-petition fees and expenses from employee counsel in  
3 an amount not to exceed \$2.9 million which is an aggregate  
4 estimate that the law firms faced for the three months after  
5 the petition date. This figure does include the law firms  
6 monthly fixed fee of around \$245,000 or in the aggregate  
7 \$733,000 over three months.

8 I would also note, Your Honor, and we will get to  
9 this when we flesh out this issue in more detail, but in  
10 light of the recent news that Mr. Kwon is likely to be  
11 extradited to South Korea later this month it's likely the  
12 debtor won't have to pay (indiscernible) fees for two months.  
13 We have made it clear in the revised order that the debtor  
14 will not pay the (indiscernible) fees and expenses for any  
15 period following Mr. Kwon's extradition.

16 The post-petition employee counsel hourly fees and  
17 expenses will be subject to the payment procedures which are  
18 reflected in the revised order. We have substantially beefed  
19 up these procedures in the revised order. Specifically, the  
20 procedures provide, as stated in the revised order, the  
21 process for the UCC and U.S.T. to be reviewing parties to  
22 review and object to employee counsel post-petition fees and  
23 expenses on the reasonable basis as outlined in Section 330  
24 of the Bankruptcy Code.

25 Also, Your Honor, if there are indemnity

1 limitations that are triggered the debtor can claw back these  
2 payments made on account of the indemnification obligations.  
3 These indemnity limitations are set forth in Singapore law  
4 and include, you know, things such as the employee conduct  
5 resulting in criminal conviction or if they can be a wrongful  
6 act against the debtor.

7           Further, we also requested authorization for post-  
8 petition fees and expenses relating to future employee  
9 indemnification claims. If these fees and expenses are  
10 approved by the special committee pursuant to the revised  
11 payment procedures, which again provide for the UCC and  
12 U.S.T. oversight, this would be an amount not to exceed  
13 \$225,000 in the aggregate.

14           THE COURT: Okay.

15           MR. ANDREWS: So, Your Honor, turning to the second  
16 category in respect to the critical vendors, we have  
17 prepetition claims of four critical vendors that are  
18 assisting the debtor and counsel with the defense of the SEC  
19 enforcement action. Your Honor may have noted in the revised  
20 order we have requested a revised amount which is gone down  
21 to \$921,900 as part of our agreement with the UCC.

22           Specifically, the debtor is now only seeking to pay  
23 40 percent of two of the critical vendors prepetition claims;  
24 those vendors being Alpha and Quinlan (phonetic). Those  
25 vendors will retain claims for the remaining 60 percent of

1 their prepetition claims due and owing. The other two  
2 critical vendors, Cornerstone and JSL (phonetic) the debtor  
3 is seeking to pay 70 percent of their prepetition expenses  
4 and those vendors will waive their claims of the remaining 30  
5 percent.

6 THE COURT: Okay.

7 MR. ANDREWS: Your Honor, I would also note that  
8 the vendors -- we have in there that the vendors will agree  
9 to continue to provide services following this payment.

10 Lastly, Your Honor, we have the third category in  
11 respect to the prepetition litigation claims. These relate  
12 to the third-party discovery request related to the SEC  
13 enforcement action. Notably the total amount for this  
14 category is now less than \$200,000. As Your Honor might  
15 recall we had a larger amount in respect to the Wintermute  
16 proceedings, and Your Honor made that order approving payment  
17 of the costs at the end of February.

18 THE COURT: Right. That issue has been dealt with.

19 MR. ANDREWS: Correct. Yes, Your Honor.

20 So, in total the debtor now seeks approval to pay  
21 less than \$4.5 million of these litigation related costs and  
22 as Your Honor knows not including Wintermute. So, Your  
23 Honor, if okay with you, I will just turn to the additional  
24 changes we have agreed with the SEC.

25 THE COURT: That would be great.

1 MR. ANDREWS: I do have a copy of the order with  
2 these changes if Your Honor would like.

3 THE COURT: Sure. Thank you, Mr. Andrews.

4 MR. ANDREWS: So, the first amendment arises in  
5 order two just at the end there, just making clear that for  
6 avoidance of doubt the post-petition payments of fees and  
7 expenses in respect to employee counsel don't go beyond the  
8 period of three months from the petition date.

9 Next, Your Honor, in Footnote 4 of page 4, making  
10 clear that the board -- sorry, the special committee in  
11 consultation with the board will approve invoices, not the  
12 other way around. And this change is similarly reflected in  
13 respect to the future indemnification request at Paragraph  
14 6(d).

15 Lastly, Your Honor, in order 10, just making clear  
16 that, you know, for avoidance of doubt that the --

17 THE COURT: This isn't a general authorization.

18 MR. ANDREWS: Exactly right. Everything is being  
19 authorized in the order and the order only. That is correct.

20 THE COURT: Okay.

21 MR. ANDREWS: And so, Your Honor, unless you have  
22 any questions about those amendments, we'll attempt to file  
23 them under COC after the hearing today.

24 THE COURT: No, I don't have questions about those  
25 amendments, and I think that leaves us then with the one

1 issue with respect to payments to Roddick; is that correct?

2 MR. ANDREWS: Yes, Your Honor. I think, before we  
3 turn to the issue in respect to Roddick, I'm going to turn to  
4 -- turn this over to my colleague Jared Friedmann in respect  
5 to entering the declarations into evidence.

6 THE COURT: Oh, okay.

7 MR. FRIEDMANN: Good morning, Your Honor, Jared  
8 Friedmann from Weil Gotshal on behalf of the debtor.

9 THE COURT: Welcome.

10 MR. FRIEDMANN: So we have four declarations in  
11 total, though Mr. Dubel's declaration was already --

12 THE COURT: Was already admitted.

13 MR. FRIEDMANN: -- admitted this morning, but that  
14 one, as was noted, applies to both the motions before you.

15 In addition to Mr. Dubel's motion, we'd move for  
16 the entrance of the declaration of Michael Leto in support of  
17 debtor's motion for entry of orders pursuant to Sections 363,  
18 503(b), and five -- 105(a) of the Bankruptcy Code,  
19 authorizing debtor to pay certain amounts in furtherance of  
20 litigation and granting related relief. That was submitted  
21 on the docket at ECF 161. Mr. Leto is available in the  
22 courtroom today should there be any desire to cross-examine  
23 him.

24 THE COURT: Very good. Is there any objection to  
25 the admission of Mr. Leto's declaration as part of the



1 debtor's case in chief for the relief sought?

2 (No verbal response)

3 THE COURT: Very well, Mr. Leto's declaration is  
4 admitted.

5 (Declaration of Michael Leto received)

6 THE COURT: Is there any party that intends or  
7 expects to cross-examine Mr. Leto regarding the contents of  
8 his declaration?

9 (No verbal response)

10 THE COURT: Mr. Leto's declaration is admitted  
11 without contradiction.

12 Mr. Freeman, you may proceed.

13 MR. FRIEDMANN: Thank you, Your Honor. In  
14 addition to that, Mr. Califano also submitted two  
15 declarations in support of this motion.

16 THE COURT: I have them both. We can deal with  
17 them together, if you wish.

18 MR. FRIEDMANN: Fantastic. And what I'd like to  
19 do also is, in connection with that, two corrections, one in  
20 each of them.

21 THE COURT: Okay.

22 MR. FRIEDMANN: The benefit of having an  
23 additional week with three different parties analyzing  
24 everything you've said --

25 THE COURT: Scrubbing the documents?

1 MR. FRIEDMANN: -- is you find out any typos that  
2 have been identified. So, if it's all right, Your Honor,  
3 before I enter them, maybe I can point those two corrections  
4 out.

5 THE COURT: That would be great.

6 MR. FRIEDMANN: Okay. So in the initial  
7 declaration, which was ECF 61-4, that was his February 13th,  
8 2024 declaration, in paragraph 5 --

9 THE COURT: Okay.

10 MR. FRIEDMANN: -- the second sentence, in the  
11 declaration it read, "The District Court granted summary  
12 judgment against the debtor and Mr. Kwon on the SEC's claims  
13 relating to certain securities-based swap claims," that  
14 actually should read, "The District Court granted summary  
15 judgment for the debtor and Mr. Kwon on the SEC's claims  
16 relating to certain securities-based swap claims."

17 So it's just changing against to for to correct  
18 that language there.

19 THE COURT: Okay.

20 MR. FRIEDMANN: With that change, we otherwise  
21 would move for the entrance into evidence of Mr. Califano's  
22 February 13th, 2024 declaration.

23 THE COURT: All right. And there's a modification  
24 to the other one as well?

25 MR. FRIEDMANN: Yes. So on that one, which was

1 entered on ECF as Document 144, and on paragraph 23, the last  
2 sentence currently reads, "Dentons, as debtor's lead  
3 litigation counsel, requires all critical vendors to be  
4 responsive and ready to carry out tasks that debtor deems  
5 necessary for the purpose of its defense to the SEC  
6 enforcement action," debtor should be debtor's counsel in  
7 that last phrase.

8 THE COURT: Okay.

9 MR. FRIEDMANN: That is correction there and, with  
10 that modification, we would also move to enter into evidence  
11 Mr. Califano's March 4th, 2024 declaration.

12 THE COURT: Very good. Is there any objection to  
13 the admission of Mr. Califano's declarations as laid out by  
14 counsel and as modified by a proffer?

15 (No verbal response)

16 THE COURT: Very well, both declarations are  
17 admitted.

18 (Declarations of Mr. Califano received)

19 THE COURT: Is there any party that intends or  
20 expects to cross-examine Mr. Califano regarding the contents  
21 of his declarations in connection with the litigation  
22 payments motion?

23 (No verbal response)

24 THE COURT: Very well, Mr. Califano's declaration  
25 is -- oh, Ms. Richenderfer?

1 MS. RICHENDERFER: Yes, Your Honor, there was one  
2 more proffer that I believe was going to be made that will do  
3 away with the necessity for cross-examination by the U.S.  
4 Trustee of Mr. Califano.

5 THE COURT: Okay. Assuming you get your proffer,  
6 is there any party that intends or expects to cross-examine?

7 (No verbal response)

8 THE COURT: I think the answer is no. So, again,  
9 if there's an issue with the proffer or if the U.S. Trustee  
10 has questions, or any party, feel free to sing out, but  
11 otherwise the Court will presume that Mr. Califano's  
12 declarations as perhaps modified by proffer are admitted.

13 You may proceed.

14 MR. FRIEDMANN: Thank you, Your Honor. So maybe -  
15 - with that introduction in mind, maybe I'll move to the  
16 proffer next, if that's --

17 THE COURT: Okay.

18 MR. FRIEDMANN: -- all right with Your Honor?

19 So the proffer that we would like to make, which  
20 otherwise would have been included in Mr. Califano's  
21 declaration or he would have testified to today, in terms of  
22 an update is that the extradition court in Montenegro  
23 determined that Mr. Kwon should be extradited to South Korea.  
24 Our understanding is that the Montenegrin prosecutor can  
25 appeal that decision, and our further understanding that we

1 could learn whether or not the Montenegrin prosecutor will  
2 decide to appeal as early as this week, but that regardless  
3 of the status of the extradition proceedings, so long as Mr.  
4 Kwon is detained in Montenegro, the debtor still requires Mr.  
5 Roddick to facilitate access to Mr. Kwon in connection with  
6 both the SEC enforcement action and the DOJ investigation.

7           Let me also check to make sure I've got -- that's  
8 everything you needed?

9           MS. RICHENDERFER: I think that --

10          THE COURT: Do you want a moment?

11          MS. RICHENDERFER: Yes, Your Honor.

12          MR. FRIEDMANN: Please.

13          THE COURT: Take your time.

14          (Pause)

15          MR. FRIEDMANN: Your Honor, if I may add one point  
16 to the proffer?

17          THE COURT: Of course.

18          MR. FRIEDMANN: Thank you, Your Honor, it is that  
19 previously Mr. Kwon, there was a ruling that he be extradited  
20 to the United States, but that decision was appealed and  
21 overturned.

22          THE COURT: And overturned?

23          MR. FRIEDMANN: Correct.

24          THE COURT: And so it's been a lower court ruling  
25 at this point granting extradition and that may be subject to

1 appellate review; is that right?

2 MR. FRIEDMANN: That's correct.

3 THE COURT: Okay, I understand.

4 MR. FRIEDMANN: Okay. And then --

5 THE COURT: Ms. Richenderfer, is that  
6 satisfactory, or do you have questions for Mr. Califano?

7 MS. RICHENDERFER: It is satisfactory, Your Honor.

8 THE COURT: Very well.

9 MR. FRIEDMANN: Thank you, Your Honor.

10 And then the last piece I'd like to offer, Your  
11 Honor, evidentiary-wise, is there are five exhibits that are  
12 listed on the Joint Exhibit list, they're Exhibits 7, 8, 9,  
13 10, and 11, which, Your Honor, I would ask that absent  
14 objection that those five exhibits also be entered into  
15 evidence. It's the Terraform Labs limited constitution at  
16 Exhibit 7, Exhibit 8 is the form deal employment agreement,  
17 Exhibit 9 is the deal master services agreement, Exhibit 10  
18 is the form company employment agreement, and Exhibit 11 is  
19 the Kobre & Kim pool retention agreement.

20 So we would ask Your Honor that those five  
21 exhibits be entered into evidence as well in support of this  
22 motion.

23 THE COURT: Very well. Any objection to the  
24 admission of those exhibits?

25 (No verbal response)

1 THE COURT: Hearing no response, those exhibits  
2 are admitted.

3 (Debtor's Exhibits 7 through 11 received.)

4 MR. FRIEDMANN: Thank you, Your Honor. I'll turn  
5 the podium back over to Mr. Andrews -- or Ms. Berkovich.

6 MS. BERKOVICH: Your Honor, before we present  
7 argument, it probably makes sense to hear from the objector,  
8 the U.S. Trustee's Office, first about what their issues are  
9 with the payment of the Roddick fees given the evidence that  
10 you heard.

11 THE COURT: Okay. Ms. Richenderfer?

12 MS. RICHENDERFER: Thank you, Your Honor, Linda  
13 Richenderfer from the Office of the United States Trustee.

14 The argument is a simple one; it is that Mr. Kwon  
15 finds himself in prison in Montenegro because he was  
16 convicted of passport forgery, having nothing to do with his  
17 job or his time with the debtor. Mr. Roddick has been  
18 representing him. I realize that Mr. Roddick has been  
19 playing varying roles perhaps during his time that he's been  
20 representing Mr. Kwon, but be that as it may, Mr. Kwon is  
21 there because of something that is totally unrelated to his  
22 prior role with the company.

23 And, in addition, I noted that Mr. Andrews when he  
24 was talking about the indemnification limitations made  
25 mention of act against interests of the debtor as being a

1 reason. And, initially, the Montenegro court had ordered  
2 that Mr. Kwon would be extradited to the United States court  
3 and --

4 THE COURT: And that was reversed --

5 MS. RICHENDERFER: I'm sorry --

6 THE COURT: -- right?

7 MS. RICHENDERFER: -- that was the first ruling,  
8 and that was appealed by Mr. Kwon's counsel that debtors are  
9 seeking to pay. And that led to it being overturned and it  
10 being directed back to the lower court to enter a ruling,  
11 which led to then the ruling to send him to South Korea,  
12 which is sort of a rather confusing series of events because  
13 it's my understanding, and I believe this is in the record,  
14 that the March 25th date was picked because it was  
15 represented to Mr. Rakoff that that was when Mr. Kwon would  
16 be in the United States and would be there for trial.

17 So whatever information he may or may not be  
18 providing through his counsel -- Mr. Kwon, that is -- through  
19 his counsel to the debtor, I don't see, if he's not going to  
20 be present and will not be, therefore, available for  
21 testimony at the trial, the question is what use is that to  
22 the debtor under the circumstances. And he's not coming to  
23 this country, at least as of right now. I understand that  
24 there are other levels of appeal that may be taken --

25 THE COURT: It seems like he's not going anywhere



1 --

2 MS. RICHENDERFER: Well --

3 THE COURT: -- real soon.

4 MS. RICHENDERFER: -- I think Montenegro -- he's  
5 worn out his welcome with Montenegro. I think Montenegro, at  
6 this point, probably -- and, Your Honor, that is purely from  
7 me reading articles, but that he has served his sentence, in  
8 other words, under Montenegro law for that which he was  
9 convicted of. They're looking to see where he should go  
10 next. And it looks, as of right now, he will be going to  
11 South Korea, and that is the result of the individual who's  
12 representing him in Montenegro whom the debtor wants to pay  
13 fees for for the last month or two and perhaps into April, if  
14 he is still there in Montenegro.

15 THE COURT: Okay, I understand.

16 MS. RICHENDERFER: If he goes to South Korea, I  
17 guess all -- we'll hear another motion or another request.

18 So I think it's just we're having a hard time  
19 reconciling that with obligations under the constitution of  
20 the company, Singapore law, and even under 363, because -- in  
21 terms of information that's being provided to the company and  
22 due to his unavailability to testify if he does go to South  
23 Korea, unless the U.S. District Court up in the Southern  
24 District of New York is allowing people to testify virtually  
25 from South Korea from a jail cell, I don't know the answer to

1 that.

2 THE COURT: I don't know, last month I had a  
3 collection of people testify from Teheran.

4 MS. RICHENDERFER: That's an interesting one. So  
5 I don't know what will happen up there, but if somebody  
6 doesn't want to testify and they're sitting in South Korea, I  
7 don't know how one makes one testify. So there is that  
8 aspect of it.

9 Thank you, Your Honor.

10 THE COURT: Thank you, Ms. Richenderfer.

11 Before I hear from the debtor in response, can I  
12 hear from the committee on the motion itself? I don't know  
13 if the committee has any position on the Kwon issue, but with  
14 respect to the application itself I think that the committee  
15 has expressed that it's supportive, but I'd like to just make  
16 sure our record is complete.

17 MR. HURST: Good afternoon, Your Honor -- almost  
18 afternoon, it's still good morning -- David Hurst, McDermott  
19 Will & Emery, for the committee.

20 Your Honor, as Mr. Azman said, we have reached  
21 agreement with the debtor regarding the litigation payment  
22 motion. The order that's before Your Honor reflects a  
23 significant negotiation between and among the parties, and we  
24 are in agreement with the terms in that order and support its  
25 entry.

1 THE COURT: Very good.

2 MR. HURST: Thank you.

3 THE COURT: Thank you.

4 Ms. Berkovich?

5 MS. BERKOVICH: Good morning, Your Honor. For the  
6 relief that we're seeking in general, we're rely on our  
7 papers to make the argument that --

8 THE COURT: Yeah, we're talking about the Kwon  
9 issue right now.

10 MS. BERKOVICH: Okay, so just focused on the Kwon  
11 issue. You have uncontroverted evidence in the form of  
12 testimony from Mr. Califano about how critical it is for the  
13 debtor's defense that we continue to pay the Roddick fees. I  
14 will direct the Court specifically to paragraphs 10 to 14 of  
15 the supplemental Califano declaration.

16 And just to summarize, you know, first, Roddick's  
17 services are the only means by which the debtor and Mr.  
18 Kwon's counsel in the SEC enforcement action are able to  
19 communicate with him and obtain cooperation while he's in  
20 jail in Montenegro.

21 Second, it's not just about whether Mr. Kwon will  
22 or will not be testifying at the SEC trial, Mr. Kwon was a  
23 key person involved with the company during the time of the  
24 actions at issue in the fraud trial. Information from Mr.  
25 Kwon, as Mr. Califano testified, is crucial to help prepare

1 the debtor's defense of the SEC enforcement action. This  
2 includes preparing witnesses and reviewing documents and  
3 Exhibits, it involves presenting the debtor's own evidence,  
4 as well as responding to the SEC's evidence.

5 Third, as Mr. Califano said, there are limited  
6 options for counsel in Montenegro. So this idea that counsel  
7 that was involved somehow in appealing extradition should be  
8 different from counsel that's working to cooperate with the  
9 debtor, that would be not workable, it would also be  
10 inefficient.

11 Fourth, and importantly, the services that Roddick  
12 is providing post-petition are unrelated to the criminal  
13 conviction, that was in the past; that was completed  
14 prepetition.

15 Fifth, we're talking about a relatively modest fee  
16 here of less than \$250,000 a month that would be paid to the  
17 Roddick firm to assist the debtor -- provide services that  
18 would ultimately assist the debtor in its defense position.

19 Sixth, I'd say, for the avoidance of doubt, we  
20 made it clear in the revised order that the debtor is not  
21 going to seek to pay Roddick for any period following the  
22 time when Mr. Kwon is extradited from Montenegro. So, based  
23 on what we're thinking today, it will only be through March  
24 that Roddick would be paid.

25 And, seventh, you know, Mr. Andrews talked about

1 the indemnity litigations, those apply here, and we would not  
2 -- you know, we would not be obligated to indemnify Mr. Kwon  
3 if his conduct is found to have triggered any any of the  
4 indemnity litigations --

5 THE COURT: Does that mean it would also be  
6 subject to clawback?

7 MS. BERKOVICH: Correct, Your Honor, yes.

8 THE COURT: I understand.

9 MS. BERKOVICH: And, lastly, I can't help but  
10 notice, but here we're seeking -- we have a Government agency  
11 taking a position that will make it harder for the debtor to  
12 defend itself fully in a serious Government -- serious action  
13 involving, you know, serious allegations of misconduct, that  
14 is not a good look, and it would also, frankly, make it  
15 harder for Mr. Kwon to defend himself against those same  
16 serious allegations.

17 So, in sum, both the evidence and the law here  
18 support that this is in the best interest of the debtor's  
19 estate to pay these fees.

20 Does Your Honor have any questions?

21 THE COURT: I do not.

22 Here's what we're going to do. I am going to  
23 overrule the objection of the United States Trustee, and I  
24 would make a couple observations.

25 First, I certainly don't believe that there is

1 anything untoward in the Trustee bringing and raising this  
2 objection. And I understand the interplay or the perceived  
3 interplay between two different governmental institutions  
4 where one of them is a plaintiff in litigation against the  
5 debtor, but the United States Trustee stands as the watchdog  
6 of the bankruptcy system, I know that because they put it  
7 into every pleading that they file --

8 (Laughter)

9 THE COURT: -- and I'm being a little bit flip,  
10 but, you know, it's not a secret that this particular issue  
11 has some hair on it and the United States Trustee has  
12 expressed concerns about whether or not using estate funds to  
13 assist and provide legal services to an individual who is  
14 presently incarcerated, and other stuff, whether that's an  
15 appropriate and wise use of funds, and the United States  
16 Trustee has objected and has continued to prosecute that  
17 objection, notwithstanding resolving other pieces. I'm going  
18 to overrule that objection based upon the evidentiary  
19 predicate that's been developed by the debtor.

20 This is a complicated and touchy issue. Court's  
21 are always concerned about the expense of funds -- the  
22 expense of funds for professionals, and then the expense of  
23 funds for professionals for management or former management  
24 that are accused of wrongdoing. But the fact of the matter  
25 is that the unrebutted testimony through Mr. Califano's

1 declaration, as well as the record developed before me today,  
2 indicates that access to Mr. Kwon is in fact necessary to  
3 litigation that is in the immediate prospect, and the debtor  
4 has made that decision and determination as reflected by  
5 declarations that have been submitted not just by Mr.  
6 Califano, but by other representatives of the estate that  
7 give the Court a measure of confidence that this is in fact a  
8 necessary and an appropriate expenditure.

9           And so I'm satisfied that the relief requested is  
10 appropriate and warranted. All of the other aspects have  
11 been -- of the relief requested in the motion have been both  
12 scrubbed carefully by the participants, and I appreciate Mr.  
13 Andrews walking the Court through those elements of it, but  
14 those are not in controversy, but I'm satisfied, so that the  
15 record is complete, that the debtors have carried their  
16 burden with respect to the relief that's being sought.

17           So I'm going to approve and authorize the relief  
18 as it's reflected in the proposed notice of filing of amended  
19 order -- or it's not amended, it's the new form of order, and  
20 I would enter that order today, noting that the United States  
21 Trustee's objection with respect to the specific issues as to  
22 the Roddick firm have been overruled. It is the Court's  
23 expectation from counsel's report and the record before me  
24 that, one way or the other, there is not expected to be an  
25 ongoing relationship with Roddick; if there is, then my

1 expectation is that that would likely be the subject of  
2 dialogue between stakeholders and, if need be, the  
3 opportunity to get on the phone with the Court on a status  
4 conference.

5 I think I would make one other observation and I  
6 think it was pointed out by committee counsel that this is an  
7 evolving situation. The debtor is headed to trial, that  
8 trial will occur, but we are in a separate proceeding and  
9 there's an expectation that further direction in this court  
10 will be informed by a variety of circumstances, including  
11 whatever may happen to Mr. Kwon, whatever is decided in  
12 Montenegro, whatever is decided in Manhattan.

13 So I think that I take a measure of comfort that  
14 the parties before me are familiar with me and have little  
15 difficulty getting a hold of me, if there are issues or  
16 uncertainty about where we're headed. And I don't think I'm  
17 giving any secret that I am generally not a fan of motion  
18 practice when it relates to the mechanics of how these cases  
19 go. If there are issues or if it starts to get complicated,  
20 you can get me on the phone, but I think I understand where  
21 we are now, I understand where the debtor wants to move  
22 forward, and I believe that the relief that's being proposed  
23 to me is appropriate and, as I said, I believe the debtors  
24 have carried their evidentiary burden under Bankruptcy Code  
25 Section 363 and 105, and I would enter that order. Okay?



1 MS. BERKOVICH: Thank you, Your Honor. We will  
2 submit a revised form of order reflecting the changes that  
3 Mr. Andrews discussed today.

4 THE COURT: Yeah, I think I'm going to have two  
5 orders. Is the Dentons order uploaded or is that final?

6 MS. BERKOVICH: We will also be uploading --

7 THE COURT: I'll look for both of them --

8 MS. BERKOVICH: -- the Dentons order.

9 THE COURT: -- to be uploaded today and I'll enter  
10 them promptly.

11 I would ask, the Court has ruled, are there any  
12 questions with respect to the Court's ruling?

13 (No verbal response)

14 THE COURT: All right. Ms. Berkovich, do we have  
15 anything else this morning --

16 MS. BERKOVICH: No, Your Honor. Thank you --

17 THE COURT: -- or it's now afternoon?

18 MS. BERKOVICH: -- thank you again for your time  
19 this morning and thank you for the adjournment that we didn't  
20 want, but helped us get to a very good place.

21 (Laughter)

22 THE COURT: I'm happy to oblige. And, again, I  
23 don't want to repeat myself, but it's not lost upon me the  
24 amount of effort and engagement that parties had to go  
25 through following last week to get to this week, and I

1 appreciate all parties making that effort to get us to a  
2 hearing today that hopefully will advance the case.

3 With that, we stand in recess. Thank you,  
4 Counsel.

5 COUNSEL: Thank you, Your Honor.

6 (Proceedings concluded at 12:05 p.m.)  
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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of my knowledge and ability.

/s/ William J. Garling

March 12, 2024

William J. Garling, CET-543

Certified Court Transcriptionist

For Reliable